

04-40119-NMG

AO 243
Rev. 6/82

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District Dist. of Massachusetts	
Name of Movant Chamond Henderson	Prisoner No. 80165-038	Docket No. # 99-40004
Place of Confinement FCI Fort Dix, New Jersey	U.S. DISTRICT COURT DISTRICT OF MASS.	
(include name upon which convicted)		
UNITED STATES OF AMERICA	V.	Chamond Henderson (full name of movant)

MOTION

1. Name and location of court which entered the judgment of conviction under attack U.S Dist. Court for
The Dist. of Massachusetts, Worcester; 595 Main St. Worc., MA
2. Date of judgment of conviction April 30, 2001
3. Length of sentence 240 months
4. Nature of offense involved (all counts) count 1 21U.SC 846 conspiracy to poss w/intent
to dist. and dist. of cocaine base
count 2,3,4,5 21 U.S.C 841 (a)(1) poss. w/intent to dist.
and dist. of cocaine base

5. What was your plea? (Check one)
 - (a) Not guilty
 - (b) Guilty
 - (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
N/A

6. Kind of trial: (Check one)
 - (a) Jury
 - (b) Judge only
7. Did you testify at the trial?
Yes No
8. Did you appeal from the judgment of conviction?
Yes No

9. If you did appeal, answer the following:

(a) Name of court U.S 1st Circuit Court of Appeals

(b) Result conviction affirmed

(c) Date of result Feb. 14, 2003

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes No X

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court N/A

N/A

(2) Nature of proceeding _____

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

N/A

(5) Result _____

N/A

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____ N/A

(6) Date of result _____ N/A

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____ N/A

(2) Nature of proceeding _____ N/A

(3) Grounds raised _____ N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____ N/A

(6) Date of Result _____ N/A

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No (2) Second petition, etc. Yes No (3) Third petition, etc. Yes No

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Petitioner was denied effective assistance of counsel at pre-trial, trial, and appeal stages.

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

See statement of fact and memorandum of law forthcoming

B. Ground two: Prosecutorial misconduct; use of perjured testimony in grand jury, motion hearing, and trial. Brady violation

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

See statement of facts and memorandum of law forthcoming

C. Ground three: Warrantless search invalid incident to arrest.

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

See statement of facts and memorandum of law forthcoming

D. Ground four: Admission into evidence of pawn shop receipts

Supporting FACTS (tell your story *briefly* without citing cases or law):
See statement of facts and memorandum of law forthcoming

13. If any of the grounds listed in 1^A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Peter L. Ettenberg 370 Main St. Worcester, MA 01608

(b) At arraignment and plea _____

(c) At trial E. Peter Parker One Commercial Wharf North Second Floor
Boston, MA 02110

(d) At sentencing _____

(e) On appeal John T. Onderkirk Jr. 490 Shrewsbury St. Suite C
Worc. , MA 01604

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

06/15/04

(date)

Chamond Henderson

Signature of Movant